

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KATHLEEN M. BURKE,

Plaintiff,

v.

CAROLYN COLVIN, Acting
Commissioner of Social Security,

Defendant.

CASE NO. C13-5548 BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable Karen L. Strombom, United States Magistrate Judge (Dkt. 13), and Plaintiff Kathleen M. Burke’s (“Burke”) objections to the R&R (Dkt. 14).

On May 22, 2014, Judge Strombom issued the R&R recommending that the Court affirm the Administrative Law Judge’s (“ALJ”) decision that Burke is not disabled. Dkt. 13. On June 5, 2014, Burke filed objections. Dkt. 14. On June 11, 2014, the Government responded. Dkt. 15.

The district judge must determine de novo any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or

1 modify the recommended disposition; receive further evidence; or return the matter to the
2 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

3 In this case, Burke disagrees with Judge Strombom's findings regarding Burke's
4 credibility and whether the ALJ fully and fairly developed the record. Dkt. 14 at 1–2.
5 With regard to her credibility, Burke objects to Judge Strombom's and the ALJ's
6 determination that, by applying for unemployment benefits, Burke was attesting that she
7 was able to work, which contradicts Burke's claim that she is disabled. The Court finds
8 no error in this conclusion because it is a reasonable inference based on the facts.
9 Moreover, the ALJ was not required to develop the record on the issue of whether Burke
10 knew of the implications of applying for unemployment benefits. Dkt. 14 at 3.
11 Therefore, the Court adopts the R&R on the issue of Burke's credibility.

12 With regard to the full and fair development of Burke's Crohn's disease, Burke
13 has failed to meet her burden. Even if the ALJ erred, Burke must show that the error was
14 prejudicial. It is simply not enough to make the unsupported argument that the evidence
15 could have undermined some of the ALJ's finding as to the severity of Burke's disease.
16 Burke must show at least a substantial likelihood of prejudice. *Ludwig v. Astrue*, 681
17 F.3d 1047, 1054 (9th Cir. 2012). Unsupported arguments of counsel do not rise to the
18 level of actual evidence that shows any likelihood of prejudice. Therefore, the Court
19 adopts the R&R on the issue of a full and fair record.

20 The Court having considered the R&R, Burke's objections, and the remaining
21 record, does hereby find and order as follows:

22 (1) The R&R is **ADOPTED**;

1 (2) The ALJ's decision is **AFFIRMED**; and

2 (3) This action is **DISMISSED**.

3 Dated this 18th day of August, 2014.

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6 BENJAMIN H. SETTLE
7 United States District Judge
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